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BEFORE THE ARIZONA CORPORATION COMMISSION

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2005 DEC -2 P 4: 35

AZ CORP COMMISSION
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IN THE MATTER OF QWEST CORPORATION'S
FILING OF RENEWED PRICE REGULATION
PLAN

Docket No. T-01051B-03-0454

IN THE MATTER OF THE INVESTIGATION OF
THE COST OF TELECOMMUNICATIONS
ACCESS.

Docket No. T-00000D-00-0672

**POST-HEARING BRIEF OF
COX ARIZONA TELCOM, LLC**

Cox Arizona Telcom, LLC ("Cox"), through undersigned counsel, hereby files its Post-Hearing Brief in support of the Settlement Agreement filed in this docket on August 23, 2005 ("Settlement Agreement").

INTRODUCTION

The hearing in this docket addressed whether the Settlement Agreement is in the public interest and should be approved. The settlement discussions were fully open to all parties to the proceeding and all but one party signed on to the Settlement Agreement.

Cox actively participated in the settlement discussion to ensure that its concerns with the revised Price Cap Plan being proposed by Qwest Corporation ("Qwest") were addressed to its satisfaction. [Direct Testimony of Mark A. DiNunzio September 6, 2005 ("DiNunzio Direct") (Cox Ex. 1) at 2:20-2:23] Among other things, Cox was concerned with Qwest's proposal to establish competitive zones in which Qwest would have complete pricing flexibility in excess of the pricing flexibility afforded to competitive providers. [*Id.* at 3:1-3:4] Cox's concerns about competitive zones, as well as concerns about adequate protections against anticompetitive pricing

1 and Qwest's proposed changes to the Arizona Universal Service Fund were resolved to Cox's
2 satisfaction in the settlement proceeding. [*Id.* at 3:12-3:16] Cox believes that the record in this
3 docket confirms that the Settlement Agreement is in the public interest and that it should be
4 approved.

5 ANALYSIS

6 **The Settlement Agreement is in the Public Interest and Should be Approved.**

7 The Settlement Agreement is in the public interest and should be approved by the
8 Commission. The Settlement Agreement reflects a careful balancing of the various interests
9 represented in this proceeding, including the interests of consumers. [Transcript Vol. I at 195:
10 4-195:12 (Qwest Witness Teitzel); 61:1-61:9 (Qwest Witness Thompson); Transcript Vol. II at
11 360:14-360:24 (Staff Witness Abinah)] It also resolves important issues in a manner that benefits
12 Arizona consumers without protracted litigation.

13 The record in this docket supports approval of the Settlement Agreement. First, notice of
14 the settlement negotiations was provided to all intervenors and all were invited to participate in the
15 ongoing discussions between the parties. [Transcript Vol. II at 360:5-360:9 (Staff Witness
16 Abinah)] The settlement negotiations were open to all parties to the proceeding and all of the
17 active parties to the proceeding participated in the settlement negotiations. As a result, all but one
18 party, the Residential Utility Consumers Office ("RUCO"), supports the Settlement Agreement.

19 Second, the Settlement Agreement has widespread support from all active parties to this
20 proceeding, with the exception of RUCO, and it resolves all disputed issues in this docket. It also
21 results in the dismissal of two appeals by Qwest of the prior price cap plan which are pending
22 before the Arizona Court of Appeals.

23 Third, one of RUCO's limited concerns with the Settlement Agreement is simply
24 unfounded. RUCO believed that some sort of geographic pricing should be incorporated into the
25 Price Cap Plan and that the lack of such pricing could result in higher rural prices. However, the
26 proposed Price Cap Plan requires Qwest to offer statewide average pricing. Statewide average
27 pricing protects rural consumers from paying higher rates. [See Rebuttal Testimony of Matthew

1 Rowell (Staff Ex. 33) at 12:8-12:14] Indeed, given statewide average pricing, rural consumers
2 should benefit from competition in the metropolitan areas where over 80% of the Qwest customers
3 reside and where Qwest faces its most intense competition. [Transcript Vol. I at 65:11-65:17
4 (Qwest Witness Thompson); 46:3-46:6 (Qwest Witness Ziegler); 66:5-66:10 (Qwest Witness
5 Thompson); Transcript Vol. II at 314:5-314:23 (Staff Witness Rowell)] The parties to the
6 Settlement Agreement further concluded that statewide averaged rates made sense because many
7 of Qwest's competitors, not just wireline competitors, but also wireless and VoIP competitors,
8 have consistent rates across the state. [Transcript Vol. I at 167:9-167:18 (Qwest Witness Teitzel);
9 Transcript Vol. II at 310:2-310:9 (Staff Witness Rowell)] Indeed, Cox, one of Qwest's main
10 competitors, charges statewide rates that do not vary from city to city or location to location.
11 [Transcript Vol. III at 512:17-512:25 (Cox Witness DiNunzio)]

12 Moreover, in light of the controversial and complicated issues surrounding the concept of
13 competitive zones, they were not included in the Settlement Agreement. [Transcript Vol. I at
14 66:21-67:19, 76:2-76:18 (Qwest Witness Thompson); 186:19-22 (Qwest Witness Teitzel)] Qwest
15 initially included a competitive price proposal in its application to renew the Price Cap Plan. The
16 competitive zone proposal was a controversial and contentious part of the renewed price cap plan
17 proceeding. [Transcript Vol. I at 63:4-63:7 (Qwest Witness Thompson); 186:19-186:22 (Qwest
18 Witness Teitzel)] The parties had different approaches for how to address the issue of geographic
19 pricing and discussions yielded complex and somewhat impracticable ways of implementing the
20 concept. [Transcript Vol. I at 63:8 - 63:10; 64:3-64:5; 66:21-66:25 (Qwest Witness Thompson)]¹

21
22 ¹ For example, Staff believed that the geographic pricing issue should be deferred to a separate docket.
23 [Transcript Vol. I at 185:9-185: 18 (Qwest Witness Teitzel); Transcript Vol. II at 322:2-322:19 (Staff Witness
24 Rowell)] While Staff may not have generally opposed the idea of competitive zones, Staff found several problems
with Qwest's proposal and, thus, advocated the issue be taken up in a separate proceeding so that those problems could
be addressed. [Transcript Vol. II at 310:19-310:22; 315:23-319:16 (Staff Witness Rowell)]

25 Cox agreed with Staff's recommendation. Competitive zone pricing is a complicated issue that needs to be
26 fully vetted in a separate proceeding. Cox was particularly concerned with ensuring that the playing field remains
level and that the implementation of competitive zones does not result in a disadvantage to other competitors.
27 [Transcript Vol. III at 507:18-507:25 (Cox Witness DiNunzio)] Cox's concerns with Qwest's specific proposal were
multiple, including: (i) the geographic area would be defined by a wire center or a subset of a wire center; (ii) all
services within a competitive zone could be priced in a fully flexible manner; (iii) price and other miscellaneous

1 Ultimately, the consensus was that competitive zone pricing did not make sense at this time
2 for Qwest and, more importantly, for the customer. [Transcript Vol. I at 76:11-76:18 (Qwest
3 Witness Thompson)] The parties agreed that it would be more appropriate to address the issue in a
4 separate proceeding and to continue statewide average pricing for the next three years, which
5 allows the benefits of competition to be shared by all. [Transcript Vol. I at 65:11-65:17; 66:5-
6 66:10 (Qwest Witness Thompson); 46:13-46:16 (Qwest Witness Zeigler)]

7 Finally, the manner in which the issue of competitive zones was resolved in this
8 proceeding is in line with the way other states have addressed the issue. [Transcript Vol. I at 64:6-
9 64:9 (Qwest Witness Thompson)] Competitive zone pricing would in essence allow Qwest to
10 lower its prices in certain geographic areas where competition is more prevalent, typically urban
11 areas, while maintaining higher prices in areas with less competition, typically rural areas.
12 [Transcript Vol. I at 64:22-65:1 (Qwest Witness Thompson)] As Qwest witness Jerrold
13 Thompson acknowledged in his testimony, this has posed a problem from a public policy point of
14 view in many states. [Transcript Vol. I at 65:10-65:11 (Qwest Witness Thompson)] Other states
15 have resolved this public policy problem the same way the parties propose resolving it in this case
16 -- by implementing statewide average pricing so that the benefits of competition in urban areas,
17 such as Phoenix and Tucson, are enjoyed by customers that may not have the same level of
18 competition in their areas. [Transcript Vol. I at 65:11-65:17 (Qwest Witness Thompson)]

19 In sum, it is not appropriate to proceed with the competitive zone proposal at this time in
20 this docket as it was originally proposed by Qwest given the strong positions held by the parties,
21 such as Staff and RUCO. [Transcript Vol. I at 194:9-194:14 (Qwest Witness Teitzel)] The
22 proposal to maintain statewide average pricing and not move to competitive zone pricing for at
23 least the next three years is appropriate in view of the current state and direction of competition.

24
25 changes for all services within a competitive zone could be implemented immediately upon notice to the Commission;
26 (iv) prices would not be subject to approval or investigation by the Commission; (v) prices and terms for services
27 within competitive zones would be different from prices outside competitive zones; (vi) prices in different competitive
zones could be different; and (vii) prices and terms for different customers within a single competitive zone could also
be different. [Direct Testimony of F. Wayne Lafferty (on behalf of Cox) November 18, 2004 (Cox. Ex. 2) at 28:21 -
29:10]

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1 [Transcript Vol. I at 167:20-167:21 (Qwest Witness Teitzel); See Transcript Vol. II at 323:5-
2 323:20 (Staff Witness Rowell)]

3 **CONCLUSION**

4 The Commission should approve the Settlement Agreement and related Price Cap Plan.

5 RESPECTFULLY SUBMITTED this 2nd day of December 2005.

6 **COX ARIZONA TELCOM, LLC**

7
8 By



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